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Attorney for Defendants

DOUGLAS SCHEEL, TROY SCHEEL,
AND MOUNTAIN WEST COMMERCIAL LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANNE L. THART, an individual and
trustee of THE ANNE L. THART
LIVING TRUST DATED JULY 1,
1998; RUSSELL CHADWICK
MCALLISTER, an individual and
trustee of THE MCALLISTER
FAMILY TRUST; AMY
MCALLISTER, and individual and
trustee of THE MCALLISTER
FAMILY TRUST; JOSEPH A.
PROCOPIO, an individual and trustee
of THE JOSEPH A. PROCOPIO SR.
FAMILY TRUST; GLENN T.
PINDER, and individual and sole
member of PINDER ENTERPRISES,
LLP,

Plaintiffs,

v.

COLLIERS INTERNATIONAL
GROUP, INC., a Canadian corporation;
MILLCREEK COMMERCIAL
PROPERTIES, LLC, a Utah limited
liability company; MILLROCK
INVESTMENT FUND 1, LLC, a Utah
limited liability company; KEVIN
LONG, an individual; BRENT SMITH,
an individual; DOUGLAS SCHEEL, an
individual; TROY SCHEEL, an
individual; MOUNTAIN WEST
COMMERCIAL LLC, a Utah limited

Case No.: 2:24-cv-10876-CV-E

*Assigned for all purposes to the
Hon. Cynthia Valenzuela
Courtroom 5D*

**DEFENDANTS DOUGLAS SCHEEL,
TROY SCHEEL, AND MOUNTAIN
WEST COMMERCIAL LLC'S
NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO FEDERAL
RULES OF CIVIL PROCEDURE
RULE 12(b)(2) AND 12(b)(6)**

*[Filed concurrently with: Declarations of
Doug Scheel, Troy Scheel, and Kelly
Maxwell]*

**DATE: June 6, 2025
TIME: 1:30 PM
COURTROOM: 5D**

Complaint Filed: December 18, 2024
Trial Date: None

1 liability company; MEGAN DESTITO,
2 an individual; CAM REALTY, LLC, a
3 Utah limited liability company; KGL
4 ADVISORS, LLC, a Utah limited
5 liability company; and DOES 1-10,
6 inclusive,

Defendants.

7 ***TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:***

8 **PLEASE TAKE NOTICE** that on June 6, 2025, at 1:30 pm, subject to the Court's
9 availability, in Courtroom 5D, located at the First Street Courthouse, 350 West First
10 Street, Los Angeles, California, 90012, Defendants Douglas Scheel, Troy Scheel, and
11 Mountain West Commercial, LLC will and hereby do move, pursuant to Federal Rules
12 of Civil Procedure 12(b)(2) and 12(b)(6), for an Order dismissing the Plaintiffs' First
13 Amended Complaint for lack of personal jurisdiction and failure to state a claim.

14 This Motion is made following the conference of counsel pursuant to Local Rule
15 7-3, which took place on April 29 2025.

16 Dated May 2, 2025

17 Respectfully submitted,

18 By: /s/ Penelope M. Deihl
19 Penelope M. Deihl, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The First Amended Complaint and all claims asserted therein by Plaintiffs Anne L. Thart, an individual and trustee of The Anne L. Thart Living Trust Dated July 1, 1998; Russell Chadwick McAllister, an individual and trustee of The McAllister Family Trust; Amy McAllister, an individual and trustee of The McAllister Family Trust; Joseph A. Procopio, an individual and trustee of The Joseph A. Procopio Sr. Family Trust; Glenn T. Pinder, an individual and sole member of Pinder Enterprises, LLP (“Plaintiffs”) against Defendants Douglas Scheel (“Doug”), Troy Scheel (“Troy”), and Mountain West Commercial, LLC (“Mountain West”) (collectively, “Defendants”) should be dismissed because this Court lacks personal jurisdiction over each of the Defendants. Put simply, Doug, Troy, and Mountain West do not have sufficient minimum contacts with the State of California. As such, exercising jurisdiction over Doug, Troy, and Mountain West, a foreign corporation, having no businesses, subsidiaries, or other sufficient minimum contacts in California would not accord with traditional notions of fair play and substantial justice. Accordingly, neither general nor specific personal jurisdiction exist, and the Court should not assume personal jurisdiction over Doug, Troy, or Mountain West. Instead, the Court should dismiss the First Amended Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

Plaintiffs’ claims are further subject to dismissal for failing to state a claim. Plaintiffs alleged Federal Securities Fraud violations under Section 10(b) of the Securities Exchange Act are all past the statute of limitations, as they occurred more than a year before this suit was filed. Additionally, Plaintiffs’ have failed to properly plead their alleged violations of Section 10(b) of the Securities Exchange Act. Plaintiffs’ claim for Breach of Fiduciary Duty should likewise be dismissed for failing to state a claim, as its allegations are indistinguishable from Plaintiffs’ claim for professional negligence. Furthermore, Plaintiffs’ claims for Conversion, Constructive Fraud, and

Violations of Unfair Competition Law all lack the specificity required to plead such claims and should be dismissed.

II. FACTUAL BACKGROUND

As Plaintiffs allege, correctly, in their First Amended Complaint, Doug and Troy are both residents of Utah. (Dkt. 91 ¶ 17-18.). Plaintiffs allege that Doug and Troy induced Plaintiffs Russell Chadwick McAllister, an individual and trustee of The McAllister Family Trust and Amy McAllister, an individual and trustee of The McAllister Family Trust (collectively the “McAllister Plaintiffs”) to sell property they owned and invest in the Millcreek properties. (Dkt. 91, ¶ 19). The McAllister Plaintiffs are residents of Utah (Dkt. 1, ¶ 7). Plaintiffs do not allege that any part of the McAllister Plaintiffs’ transaction took place outside of Utah. Plaintiffs First Amended Complaint against Defendants focuses solely on the McAllisters; there are no allegations that Doug, Troy, or Mountain West were involved with the other Plaintiffs.

Plaintiff Anne L. Thart (“Thart”) is a resident of this District. (Dkt. 91, ¶ 6; 106). Thart sold real estate she owned and, through Defendant Megan Destito, invested in property in Crockett, Texas (the “Property”). (Dkt. 91, ¶ 6, 2). None of the other plaintiffs or defendants reside in California and none of the other transactions involve property in California.

Doug has never had any communications with Thart. (Declaration of Doug (“Doug Decl.”), ¶ 4). Doug is an associate real estate broker in Utah; he is not licensed in California. (Doug Decl., ¶ 3). Doug was not involved in Thart’s purchase of the Property. (Doug Decl., ¶ 5). Accordingly, Doug did not, through any act or omission, make any misrepresentations to Thart.

Likewise, Troy never had any communications with Thart. (Declaration of Troy (“Troy Decl.”), ¶ 4). Troy is a real estate agent and real estate broker in Utah; he is not licensed in California. (Troy Decl., ¶ 3). Troy was not involved in Thart’s purchase of the Property. (Troy Decl., ¶ 5). Accordingly, Troy did not, through any act or omission, make any misrepresentations to Thart. .

A. Mountain West Is a Foreign Corporation with No Business Operations in California.

Mountain West was at all relevant times, and still is, incorporated in the State of Utah. (Declaration of Kelly Maxwell (“Maxwell Decl.”), ¶ 3). Mountain West’s headquarters are located at 312 East South Temple, Salt Lake City, Utah from where Mountain West performs the vast majority of its functions. (Maxwell Decl., ¶ 3). As such, decisions concerning the direction, control and business activities of Mountain West are all made, communicated and implemented from Mountain West’s headquarters in Utah. (Maxwell Decl., ¶ 3).

Mountain West is not and has never been registered with the California Secretary of State to operate in and do business in the State of California. (Maxwell Decl., ¶ 4). Mountain West does not have business operations in California and has never had a physical presence anywhere in the State of California. (Maxwell Decl., ¶ 5). Mountain West does not have any agents licensed in California. (Maxwell Decl., ¶ 6). Mountain West is not engaged in advertising specifically targeting California. (Maxwell Decl., ¶ 7).

Since November 2022, agents with Mountain West have had six (6) transactions in California. (Maxwell Decl., ¶ 8). For each transaction, the Mountain West agent associated with a California licensed broker. (Maxwell Decl., ¶ 8). None of these transactions involved the Plaintiffs in this matter or the Property. (Maxwell Decl., ¶ 8). Additionally, none of these transactions involved Doug or Troy. (Maxwell Decl., ¶ 8).

Doug did not purposefully direct activities or avail himself to California. (Doug, Decl., ¶ 3-5). Likewise, Troy also did not purposefully direct activities or avail himself to California. (Troy Decl., ¶ 3-5). Accordingly, California lacks personal jurisdiction over Doug, Troy, and Mountain West.

III. LEGAL STANDARD

A. Personal Jurisdiction

Under Rule 12(b)(2), a defendant may move for dismissal based on lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). Where there is no applicable federal statute

governing personal jurisdiction, “the district court applies the law of the state in which the district court sits.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006); *see* Fed. R. Civ. P. 4(k)(1)(A). Thus, there are two limitations on a federal court’s power to exercise personal jurisdiction over a nonresident defendant: the applicable state personal jurisdiction rule and constitutional principles of due process. *Sher v. Johnson*, 911 F.2d 1357, 1360 (9th Cir. 1990) (citing *Data Disc, Inc. v. Sys Tech. Assoc.*, 557 F.2d 1280, 1286 (9th Cir. 1977)). California’s personal jurisdiction rule provides that “[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” Cal. Code Civ. Proc. § 410.10. Accordingly, in California, the statutory limitation on a court’s personal jurisdiction is “coextensive with the outer limits of due process,” and the federal and state jurisdictional inquiries merge into a single analysis. *Sher*, 911 F.2d at 1361; *Yahoo!*, 433 F.3d at 1205; Cal. Code Civ. Proc. § 410.10. “The plaintiff bears the burden of demonstrating that jurisdiction is appropriate.” *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010).

B. Failure to State a Claim

Dismissal is warranted where the plaintiff fails “to state a claim upon which relief can be granted”. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion challenges the adequacy of the complaint on its face, testing whether the plaintiff has properly stated a cognizable cause of action. “[W]ell-pleaded facts” must do more than “infer ... the mere possibility” of a cognizable claim; they must “plausibly give rise to an entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (citing *Bell Atl. Corp. v. Twombly*, (2007)). A complaint is insufficient under Rule 12(b)(6) if it fails to contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 129. Only a complaint “that states a plausible claim for relief survives a motion to dismiss. *Id.* at 1950.

¹ As discussed below, Plaintiffs’ claim for violations of the Securities Act is additionally without merit, as the statute of limitations has passed.

At the pleading stage, a complaint must meet “the threshold requirement of Rule 8(a)(2) that the ‘plain statement’ possess enough heft to ‘sho[w] that the pleader is entitled to relief. *Twombly*, 550 U.S. at 557 (*quoting* F.R.C.P. 8(a)(2)) (alterations in original). Thus, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]” *Trombly*, 550 U.S. at 555. Finally, although courts must accept all well-pleaded facts as true, courts “are not bound to accept as true a legal conclusion couched as a factual allegation[.]” *Id.*

IV. LEGAL ARGUMENT

A. This Court, Like All California Courts, Lacks Personal Jurisdiction Over Doug, Troy and Mountain West, Non-Resident Defendants.

For a court to exercise jurisdiction over a nonresident defendant, the non-resident defendant must have “such minimum contacts with [the State] that the assertion of jurisdiction does not violate ‘traditional notions of fair play and substantial justice.’” *International Shoe Co. v. State of Washington, et al.*, 326 U.S. 310, 316 (1945) (citing *Milliken v. Meyer*, 311 U.S. 457 (1940)). Put another way, courts do not have jurisdiction over a nonresident defendant unless the defendant has purposefully established “minimum contacts” with the forum state, and the exercise of jurisdiction comports with “fair play and substantial justice.” *Id.* at 316; *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255 (2017).

Two categories of contacts may satisfy this requirement. First, a federal district court has general jurisdiction over a nonresident defendant where the defendant had “substantial” contacts or conducted “continuous and systematic” activities within the state that the district court sits, “even if the cause of action is unrelated to those activities.” *Sher*, 911 F.2d at 1361; *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). Where general jurisdiction is does not exist, a court may still exercise specific jurisdiction over a nonresident defendant where: (1) the defendant purposefully directed activities toward the forum or purposefully availed himself of the benefits and protections

of the forum’s laws; (2) the claim arises out of the defendant’s forum-related activities; and (3) exercise of jurisdiction would be reasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

General jurisdiction over Doug, Troy, and Mountain West does not exist as they have not engaged in “substantial” contacts or conducted “continuous and systematic” activities in California.

To establish general personal jurisdiction, a plaintiff must demonstrate the defendant has sufficient contacts to “constitute the kind of continuous and systematic general business contacts that ‘approximate physical presence.’” *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1124 (9th Cir. 2002) (quoting *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000), modified, *Yahoo!*, 433 F.3d 1199, 1207 (9th Cir. 2006)). More specifically, the Supreme Court has held that the exercise of general jurisdiction over a corporation’s contacts with the forum state must be so extensive as to render the company essentially “at home” in the state. *Goodyear*, at 751. Importantly, in *Daimler AG v. Bauman et al.*, 571 U.S. 117 (2014), the Supreme Court instructed lower courts to consider a corporation’s contacts with a forum in light of the entirety of their business. As Justice Ginsburg, writing for the majority, stated: a “corporation that operates in many places can scarcely be deemed at home in all of them.” *Daimler*, at 762. To further clarify, in *BNSF Railway Co. v. Tyrrell*, 581 U.S. 402 (2017), the Supreme Court reaffirmed that general jurisdiction over a corporation outside of its state of incorporation or principal place of business is proper but only in an “exceptional case.” *BNSF Railway Co.*, at *413.

In the instant case, Mountain West’s business contacts do not meet the minimum standards for general jurisdiction as outlined in authorities cited above. In particular, at all relevant times, Mountain West was, and still is, incorporated in Utah. Beyond the place of incorporation, Mountain West’s “home” is Utah as Mountain West’s headquarters is located in Salt Lake City, Utah. Mountain West’s headquarters constitutes the place from where Mountain West performs the vast majority of its

1 corporate executive and administrative functions, and from where it conducts the vast
2 majority of its business operations.

3 In contrast, Mountain West's contacts with California are, at most, scant.
4 Mountain West is not and has never been registered with the California Secretary of State
5 to operate in and do business in the State of California. (Maxwell Decl., ¶ 4). Mountain
6 West does not have business operations in California and has never had a physical
7 presence anywhere in the State of California, not so much as a California P.O. Box or
8 other mailing address. (Maxwell Decl., ¶ 5). Mountain West also does not and has never
9 hired or employed any individual to work in or out of the State of California. (Maxwell
10 Decl., ¶ 5-6).

11 Doug and Troy are residents of Utah and have no contacts with California. Neither
12 Doug nor Troy conduct business in California. (Doug Decl., ¶ 3; Troy Decl., ¶ 3).

13 Further, nothing in Plaintiff's First Amended Complaint supports a finding of
14 general personal jurisdiction over Mountain West. To the contrary, Plaintiff admits that
15 Mountain West is a foreign corporation and offers no allegations, much less any specific
16 examples of "substantial" contacts or "continuous and systematic" activities Mountain
17 West carries out in California. There is simply no basis upon which California could fairly
18 and justly be regarded as Mountain West's "home." Therefore, this Court should find
19 that general personal jurisdiction over Mountain West does not exist.

20 Likewise, neither Doug nor Troy have any "substantial" contacts or "continuous
21 and systematic" activities in California. There is no basis for general personal jurisdiction
22 over Doug or Troy and this Court should find that general personal jurisdiction over them
23 does not exist.

24 **Specific jurisdiction over Doug, Troy, and Mountain West does not exist as they did**
25 **not purposefully direct activities or avail themselves to California.**

26 Again, to establish specific jurisdiction over a nonresident defendant, Plaintiffs
27 must demonstrate that: (1) the defendant purposefully directed activities toward the forum
28 or purposefully availed himself of the benefits and protections of the forum's laws; (2)

1 the claim arises out of the defendant's forum-related activities; and (3) exercise of
2 jurisdiction would be reasonable. *Schwarzenegger*, 374 F.3d at 802.

3 To determine the existence of purposefully directed activities toward a forum,
4 courts have held that purposefully directed or availed means that the defendant's contacts
5 with the forum state must not be random, fortuitous, attenuated, or the result of unilateral
6 activity of a third person or another party. *Burger King v. Rudzewicz*, 471 U.S. 462, 475-
7 76 (1985); *World-Wide Volkswagen Corp. et al. v. Woodson, District Judge of Creek*
8 *County, Oklahoma, et al.*, 444 U.S. 286, 291-9 (1980). In *Hanson v. Denckla*, 357 U.S.
9 235 (1958) the Court observed that "[t]he unilateral activity of those who claim some
10 relationship with a nonresident defendant cannot satisfy the requirement of contact with
11 the forum State." *Hanson*, at 253 citing *International Shoe*, at 319. Here, Plaintiffs' have
12 not alleged any contacts between Doug, Troy, and Mountain West and Thart. As such,
13 there is simply no basis to exercise specific personal jurisdiction over Doug, Troy, and
14 Mountain West in California.

15 For all the foregoing reasons, Doug, Troy, and Mountain West did not purposefully
16 direct activities or avail themselves to California. Hence, California lacks personal
17 jurisdiction over Doug, Troy, and Mountain West.

18 **Specific jurisdiction over Doug, Troy, and Mountain West also does not exist**
19 **because the exercise of jurisdiction would not be reasonable.**

20 Due Process requires that the exercise of personal jurisdiction over a non-resident
21 defendant be fair and reasonable under the circumstances. *Burger King Corp.*, at 475-76;
22 *World-Wide Volkswagen Corp.*, at 291-92; *International Shoe*. In determining
23 reasonableness, courts consider seven factors: (1) the extent of the defendant's purposeful
24 interjection in the forum state; (2) the burden on the defendant of defending the lawsuit
25 in the forum state; (3) the extent of any conflict with the sovereignty of the defendant's
26 home state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient
27 judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's
28 interest in convenient and effective relief; and (7) the existence of an alternative forum.

1 See *Harris Rutsky Co. v. Bell Clements*, 328 F.3d 1122, 1129 (9th Cir. 2003); *Core-Vent*
2 *Corp. v. Nobel Industries*, 11 F.3d 1482, 1487-88 (9th Cir. 1993). Exercising jurisdiction
3 over Doug and Troy, non-resident individuals, with no contacts with the State of
4 California would not be fair or reasonable. Likewise, exercising jurisdiction over
5 Mountain West, a non-resident corporation with no continuous or systematic contacts
6 within the State of California would not be fair and reasonable.

7 With respect to the extent of the Defendants' purposeful interjection in the forum
8 state, this fails on its face. As thoroughly discussed above, the Defendants did not have
9 any contacts or involvement with Thart and did not avail themselves to benefits and
10 protections of California. Based on the case law and lacking evidence of Doug, Troy, or
11 Mountain West's purposeful activities directed at California, this factor favors a finding
12 that the exercise of personal jurisdiction over Doug, Troy, and Mountain West is
13 unreasonable.

14 With specific answer to the burden on Defendant to defend the lawsuit in the
15 forum state, there would be a significant burden on Mountain West to litigate this matter
16 in California. The headquarters are in Utah, and everyone involved in the transactions
17 with the McAllister Plaintiffs are located in Utah. The property at issue is located in
18 Texas. As such, this factor too favors a finding that the exercise of personal jurisdiction
19 over Doug, Troy, and Mountain West is unreasonable.

20 With respect to the extent of any conflict with the sovereignty of the Defendants'
21 home state and the forum state's interest in adjudicating the dispute, the transactions
22 between Defendants and the McAllister Plaintiffs all occurred in Utah. With the
23 exception of Plaintiffs' claim for Federal Securities Fraud, all the other causes of action
24 alleged against Defendants are governed by and should be resolved under the laws of
25 Utah, not California. Again, these factors favor a finding that the exercise of jurisdiction
26 over Doug, Troy, and Mountain West is unreasonable.

27 Finally, with respect to the remaining factors-- the most efficient judicial
28 resolution of the controversy; the importance of the forum to the plaintiff's interest is

1 convenient and effective relief; and the existence of an alternative forum, these factors
2 too favor a finding that the exercise of jurisdiction over Doug, Troy, and Mountain West
3 is not appropriate. Undoubtedly, the most efficient and effective resolution of the
4 McAllister Plaintiffs' claims can be achieved in Utah.

5 For all the foregoing reasons, under the circumstances, the exercise of personal
6 jurisdiction over Doug, Troy, and Mountain West, non-resident defendants, is not fair
7 and reasonable.

8 **4. Supplemental Jurisdiction would not be reasonable**

9 Plaintiffs seek to invoke this Court's federal question jurisdiction based on the First
10 Cause of Action arising under the Federal Securities Exchange Act. Plaintiffs remaining
11 causes of action arise under state law. The Court should decline to exercise supplemental
12 jurisdiction over any of the remaining state law claims. *See Royal Canin U. S. A., Inc. v.*
13 *Wullschleger*, 604 U.S. 22, 145 S. Ct. 41 (2025) (removal of all federal questions deprived
14 district court of supplemental jurisdiction over remaining state-law claims); *City of*
15 *Whittier v. United States Dept. of Justice*, 598 F.2d 561, 564 (9th Cir. 1979) ("Dismissal
16 of the federal claim before trial warranted dismissal of the City's state law claim as well.").

17 A district court "may decline to exercise supplemental jurisdiction over a
18 claim...[if] the district court has dismissed all claims over which it has original
19 jurisdiction." 28 U.S.C. § 1367(c)(3). The appropriateness of federal jurisdiction depends
20 "on the substance of the suit—the legal basis of the claims (federal or state?) and the
21 citizenship of the parties (diverse or not?). ... the rule that jurisdiction follows the operative
22 pleading serves a critical function. It too ensures that the case, as it will actually be
23 litigated, merits a federal forum." *Royal Canin*, 604 U.S. at 38–39. When the federal-law
24 claim is removed, "federal-question jurisdiction dissolves." *Id.* ("[W]ith any federal
25 anchor gone, supplemental jurisdiction over the residual state claims disappears as well.
26 The operative pleading no longer supports federal jurisdiction, and the federal court must
27 remand the case to the state court where it started."). Whether this occurs by an
28

1 amendment to the complaint removing the federal claims or the dismissal of such claims,
2 should not matter.

3 Accordingly, the Court should decline to exercise supplemental jurisdiction over
4 the claims. Doug, Troy, and Mountain West, as detailed below, have no connection to
5 California. Both Doug and Troy reside in Utah. Mountain West is a foreign corporation
6 and has no businesses, subsidiaries, or other sufficient minimum contacts in California.
7 Doug, Troy, and Mountain West were only involved with the McAllister Plaintiffs, who
8 also reside in Utah. The transactions did not occur in California and the properties at issue
9 are not located in California. As evident by the lack of specific allegations in the First
10 Amended Complaint related to Doug, Troy, and Mountain West, their involvement with
11 *two* non-California plaintiffs in the alleged non-California transactions involving non-
12 California real property were limited.

13 Importantly, “the mere assertion of a federal claim is not sufficient to obtain
14 jurisdiction under 28 U.S.C. §§ 131 and 1343(a)(3).” *Woodly v. Balt. Gas & Elec.*, No.
15 JKB-24-01813, 743 F. Supp. 3d 689, 693 (D. Md. 2024) (quoting *Lovern v. Edwards*, 190
16 F.3d 648, 654- 55 (4th Cir. 1999)). Instead, “[f]ederal jurisdiction requires that a party
17 assert a substantial federal claim.” *Id.* (quotation omitted). Here, Plaintiffs’ securities law
18 claims are without merit with respect to Doug, Troy, and Mountain West. The statute of
19 limitations has clearly run, and Plaintiffs have failed to meet the requisite pleading
20 requirements in their First Amended Complaint. Additionally, Plaintiffs state law claims
21 “substantially predominate over the federal securities law claims in terms of proof, the
22 scope of the issues raised, and the comprehensiveness of the remedy sought.” *Probability*
23 *Media Corp. v. Isen*, No. 17-CV-2583-CAB-WVG, 2018 U.S. Dist. LEXIS 230534 (S.D.
24 Cal. Mar. 28, 2018) (declining to exercise supplemental jurisdiction over state law claims
25 after dismissing securities law claims); *citing United Mine Workers v. Gibbs*, 383 U.S.
26 715, 86 S. Ct. 1130 (1966).

27 As such, Plaintiffs should not be allowed to rely on vague federal claims in order to
28 haul Doug, Troy, and Mountain West into California. This Court should decline an

1 exercise supplemental jurisdiction.

2 **B. Plaintiffs’ First Cause of Action Must be Dismissed Because of the**
3 **Statute of Limitations.**

4 Plaintiffs’ have pled that the “[i]vestment in TIC interests was a security as defined
5 by 15 U.S.C. § 77b (a)(1).” (Dkt. 91, ¶ 109). The Securities Act of 1933 provides that any
6 action must be brought “within one year after the violation upon which it is based.” 15
7 U.S.C. § 77m. It is Defendants’ understanding that Plaintiffs believe that the statute of
8 limitations for this matter is controlled by 28 U.S.C. § 1658(b), which would allow two
9 years from the Plaintiffs’ discovery of facts constituting a violation. While Plaintiffs
10 appear to rely on *York County v. HP, Inc.*, 65 F.4th 459 (9th Cir. 2023), Defendants do
11 not find this case to be instructive, as the case only addressed claims that arose under 15
12 U.S.C. § 78j(b) and only addresses the application of the discovery rule; not how a court
13 should resolve issues with competing statutes of limitations. As 15 U.S.C. § 77m is more
14 specific than 28 U.S.C. § 1658(b), Defendants argue the Court should apply the one-year
15 statute of limitations provided for by 15 U.S.C. § 77m. See Perez-Guzman v. Lynch, 835
16 F.3d 1066, 1075 (9th Cir. 2016) (“*The canon provides that a ‘narrow, precise, and*
17 *specific’ statutory provision is not overridden by another provision ‘covering a more*
18 *generalized spectrum’ of issues. Radzanower v. Touche Ross & Co., 426 U.S. 148, 153–*
19 *54, 96 S.Ct. 1989, 48 L.Ed.2d 540 (1976). When two statutes come into conflict, courts*
20 *assume Congress intended specific provisions to prevail over more general ones.*”).

21 Plaintiffs first filed more than a year after the alleged violations. Plaintiffs’ First
22 Amended Complaint does not attempt to explain why Plaintiffs failed to file within the
23 one-year statute of limitations. Plaintiffs have alleged that an April 30, 2024 email from
24 Long, “was the first time Long, Millcreek, Millrock, Colliers and other Defendants
25 disclosed to Plaintiffs that their funds were used to pay \$2,000,000 to Pulse for equipment
26 and start up costs,” and that in June 2024, “Plaintiffs’ learned that Pulse, Achy Legs and
27 Spectre’s assets had been secured by a UCC lien in July 2022 filed by another creditor.”
28 (Dkt. 91 ¶ 98, 100). These allegations do not cure Plaintiffs late filing. The trigger date is

1 “when the defendants sold what could be unregistered securities.” *Gardner v. Inv’rs*
2 *Diversified Capital, Inc.*, 805 F. Supp. 874 (D. Colo. 1992); *Doran v. Petroleum Mgmt.*
3 *Corp.*, 576 F.2d 91, 95 (5th Cir. 1978). The limitations period runs from the date of the
4 violation, *not the date Plaintiffs discovered such violation*, because “non-registered
5 violations are easily uncovered.” *Argent Classic Convertible Arbitrage Fund, L.P. v.*
6 *Amazon.com, Inc.*, No. C01-0640L, 2003 WL 26116562, at *4 (W.D. Wash. Jan. 6, 2003);
7 *see also Temple v. Gorman*, 201 F. Supp. 2d 1238, 1242 (S.D. Fla. 2002); *Blatt v. Merrill*
8 *Lynch*, 916 F. Supp. 1343, 1352 (D.N.J. 1996); *Snyder v. Newhard, Cook & Co.*, 764 F.
9 Supp. 612, 618 (D. Colo. 1991)); *Cook v. Avien, Inc.*, 573 F.2d 685 (1st Cir. 1978); *Gridley*
10 *v. Cunningham*, 550 F.2d 551, 552-53 (8th Cir. 1977) (*Mason v. Marshall*, 412 F. Supp.
11 294, 299 (N.D. Tex. 1974), *aff’d*, 531 F.2d 1274 (5th Cir. 1976); *Shuman v. Sherman*,
12 356 F. Supp. 911, 912-13 (D.Md. 1973); *Moerman v. Zipco, Inc.*, 302 F. Supp. 439, 445
13 (E.D.N.Y. 1969), *aff’d*, 422 F.2d 871 (1970).

14 To comply with the statute of limitations and satisfy the pleading requirements of
15 Section 12(a)(1), because the Original Complaint was filed December 18, 2024, Plaintiffs
16 must have alleged some violation, *e.g.*, the date Defendants sold one of the Plaintiffs
17 unregistered securities, on or after December 18, 2023. Plaintiffs have not. Instead, the
18 First Amended Complaint merely sets forth various dates related to the transactions and
19 representations by Defendants that occurred in 2022, January 2023, and May 2023. (Dkt.
20 91 ¶ 6-10). The warranty deeds for the Properties show the most recent acquisition by
21 Plaintiffs of an alleged Property was over a year *before* Plaintiffs filed their Original
22 Complaint on December 18, 2024. The Court must dismiss.

23 **C. Plaintiffs’ First and Second Causes of Action Must be Dismissed**
24 **for Failing to Comply with The Heightened Pleading Standard Under**
25 **the PSLRA.**

26 Plaintiffs’ First and Second Causes of Action must be dismissed under the
27 heightened pleading standard of the Securities Litigation Reform Act of 1995 (the
28

1 “PSLRA”).² *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir. 2009)
2 (a complaint asserting claims under section 10(b) and Rule 10(b)(5) “must satisfy the dual
3 pleading requirements of Federal Rule of Civil Procedure 9(b) and the PSLRA.”).

4 To succeed on a claim under section 10(b) and Rule 10(b)(5), Plaintiffs must show:
5 “(1) a material misrepresentation or omission; (2) scienter; (3) a connection between the
6 misrepresentation or omission and the purchase or sale of a security; (4) reliance; (5)
7 economic loss; and (6) loss causation.” *Oregon Pub. Employees Ret. Fund v. Apollo Grp.*
8 *Inc.*, 774 F.3d 598, 603 (9th Cir. 2014) (citing *Stoneridge Inv. Partners, LLC v. Scientific–*
9 *Atlanta, Inc.*, 552 U.S. 148, 157 (2008)). Plaintiffs miss this standard.

10 Under the first element, a plaintiff “must show that each defendant made a
11 statement that was misleading as to a material fact.” *In re Regulus Therapeutics Inc. Sec.*
12 *Litig.*, 406 F. Supp. 3d 856 (2019) (quoting *Matrixx Initiatives, Inc. v. Siracusano*, 563
13 U.S. 27 (2011)). “[A] statement is misleading if it would give a reasonable investor the
14 impression of a state of affairs that differs in a material way from the one that actually
15 exists.” *Onie v. Conners*, 610 F.3d 1103, 1109 (9th Cir. 2010) (citations omitted). A fact
16 is material “when there is a substantial likelihood that the disclosure of the omitted fact
17 would have been viewed by the reasonable investor as having significantly altered the
18 ‘total mix’ of information made available.” *Matrixx Initiatives*, 563 U.S. at 38 (internal
19 quotations and citations omitted). A plaintiff must also state the reasons why “each
20 statement is false or misleading.” *Hable v. Godenzi*, No. 24-646, 2023 WL 8653185 (9th
21 Cir. Dec. 31, 2024); citing 15 U.S.C. § 78u-4(b)(1).

22 Plaintiffs fail to satisfy this standard. Plaintiffs allege that “Doug and Troy verbally
23 stated to the McAllisters that they had personally invested in Millcreek properties, could
24 vouch for the professionalism and knowledge of Millcreek and stated that there was no
25 risk because the McAllisters could sell their interests at any time” and “[w]hen asked if

26
27 ² To the extent that Plaintiffs’ First and Second Causes of Action reference treble damages because
28 “Defendants’ conduct caused elder Plaintiffs, senior citizens substantial loss of property...” (Dkt. 91, ¶
127), Doug, Troy and Mountain West would note that the McAllister Plaintiffs were both under the age
of 65 at the time of the transactions at issue.

1 they received compensation in connection with the sale of the Property of the McAllisters,
2 Doug and Troy falsely states that they did not.” (Dkt. 91, ¶ 19). “They also stated tha the
3 Property would be professionally managed and Plaintiffs would not have to personally
4 deal with the Property.” (Dkt. 91, ¶54). “Doug and Troy Scheel reviewed the Offering
5 Memorandum with Chad McAllister via telephone, during the due diligence period, and
6 encouraged the McAllisters to invest in a Millcreek property. Based on Doug and Troy
7 Scheel’s recommendations, the McAllisters identified the Crocket Property...” (Dkt. 91,
8 ¶ 81).

9 These allegations are not sufficient to pled to identify material misrepresentations
10 or state they are false or misleading. A blanket allegation that incorporates “all allegations”
11 in the First Amended Complaint dealing with fraud is also insufficient. *Id.*; *see Innovatel*
12 *Servs. Inc. v. First Bridge Merch. Sols., LLC*, No. 220CV07681, 2021 WL 3415218, at *8
13 (C.D. Cal. Mar. 19, 2021); *Maeda v. Pinnacle Foods Inc.*, 390 F. Supp. 3d 1231, 1252
14 (D. Haw. 2019). Defendants should not have to guess which of the preceding paragraphs
15 applies to the Section 10(b)/Rule 10(b)(5) claim.

16 Even if Plaintiffs could somehow show that they adequately pled
17 material misrepresentations, they fail to plead scienter with particularity. *Zucco Partners,*
18 *LLC*, 552 F.3d at 990 (In securities fraud cases, plaintiffs are required to plead both falsity
19 and scienter with particularity.) Plaintiffs need to show that “the defendants made false or
20 misleading statements either intentionally or with deliberate recklessness.” *Zucco*
21 *Partners, LLC*, 552 F.3d at 991. Such assertion “must be more than merely plausible or
22 reasonable—it must be cogent and at least as compelling as any opposing inference of
23 nonfraudulent intent.” *Tellabs, Inc.*, 551 U.S. at 314.

24 Plaintiffs have failed to do so. There is no specific allegation that Doug, Troy,
25 or Mountain West intentionally or with “deliberate recklessness” made any
26 misrepresentations to the McAllister Plaintiffs. Instead, Plaintiffs just parrot the elements
27 for a securities fraud claim. (Dkt. 91, ¶ 109-113). Simply reiterating the legal standard is
28

1 wholly insufficient. *See Branca v. Ocwen Loan Servicing, LLC*, No. CV 13-7502 BRO
2 (Ex), 2013 WL 12120261, at *1 (C.D. Cal. Dec. 27, 2013).

3 Plaintiffs’ in their Second Cause of Action pled claims under Rule 10(b)(5)-(a) and
4 Rule 10(b)(5)-(c), however, both claims are merely a recast of Plaintiffs’ claims under
5 Rule 10(b)(5)-(b). While the Ninth Circuit and California federal courts have clearly held
6 that Rule 10(b)(5)-(a) and (c) claims can overlap with Rule 10(b)(5)-(b) claims, the recent
7 case law does not alter the requirement that the misstatements under Rule(b)(5)-(b) must
8 still be sufficiently pled in order for such conduct to also support claims under (a) and (c).
9 *See In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687, 709 (9th Cir. 2021); *Sec. & Exch. Comm’n*
10 *v. Earle*, No. 3:22-CV-01914-H-MDD, 2023 WL 2899529, at *7 (S.D. Cal. Apr. 11, 2023)
11 (“In *Lorenzo*, the Supreme Court recognized the “considerable overlap” between the
12 subsections of Rule 10b-5....The Ninth Circuit is clear that the “argument that Rule 10b-
13 5(a) and (c) claims cannot overlap with Rule 10b-5(b) statement liability claims is
14 foreclosed by *Lorenzo*.” (citing *Lorenzo v. Sec. & Exch. Comm’n*, 587 U.S. 71(2019) and
15 *In re Alphabet, Inc. Securities Litigation*, 1 F. 4th at 709)).

16 As shown above, Plaintiffs have failed to sufficiently plead a material
17 misrepresentation or any other conduct that would support Plaintiffs Rule 10(b)(5)-(a) and
18 (c) claims. Accordingly, Plaintiffs’ First and Second Causes of Action must be dismissed
19 under the PSLRA.

20 **D. Plaintiffs’ Fifth Cause of Action for Breach of Fiduciary Duty Must**
21 **be Dismissed for Failing to State a Claim**

22 ““The elements of a cause of action for breach of fiduciary duty are the existence of
23 a fiduciary relationship, its breach, and damage proximately caused by that breach.” (*Knox*
24 *v. Dean*, 205 Cal.App.4th 417, 432 (2012) (citations omitted). Plaintiffs allege that
25 Defendants breached their fiduciary duty to Plaintiffs by failing to disclose material
26 information about the investments, failing to conduct adequate due diligence on the tenants,
27
28

1 and conflicts of interest, and fees charged for the investments.³ Plaintiffs in their eighth
2 cause of action pled professional negligence, also based on the allegation that Defendants
3 failed to disclose relevant information.

4 Courts have recognized the distinctions between breach of fiduciary duty and
5 negligence causes of action. A claim for breach of fiduciary duty must involve more than
6 the failure to meet the standard of care. *Buehler v. Sbardellati*, 34 Cal.App.4th 1527, 1544
7 fn. 9 (1995) (stating “there is authority for the view the breach of fiduciary duty theory is
8 separate from the professional negligence theory” but “leav[ing] any resolution of this
9 separate cause of action question to another case.”). Other jurisdictions have found that a
10 breach of fiduciary cause of action will not survive if based on duplicative allegations of
11 professional negligence. *See Pippen v. Pedersen and Houpt*, 369 Ill.Dec. 384, 391
12 (2013) (no breach of fiduciary duty cause of action as “plaintiff’s negligence and breach of
13 fiduciary duty claims share the same operative facts and injuries ... and those injuries were
14 actually caused by defendant’s allegedly negligent acts”); *Cosmetics Plus Group, Ltd. v.*
15 *Traub*, 105 A.D.3d 134, 143 (2013) (“[W]e find that the cause of action for breach of
16 fiduciary duty was properly dismissed as duplicative of the legal malpractice claim. It arose
17 out of the same facts as the legal malpractice claim ...”); *Nettleton v. Stogsdill*, 387
18 Ill.App.3d 743 (2008) (“Because plaintiff’s claim for breach of fiduciary duty was based
19 on the same operative facts and alleged the same injury as her claim for legal malpractice,
20 the dismissal of plaintiff’s breach of fiduciary duty claim was appropriate”); *Pereira v.*
21 *Thompson*, 230 Or.App. 640 (2008) (two “claims are distinct” because “[a]n attorney
22 negligence claim concerns competence [and] a breach of fiduciary claim concerns
23 loyalty”); and *Aller v. Law Office of Carole C. Schrieffer*, 140 P.3d 23, 28 (Colo.Ct.App.
24 2005) (“When a legal malpractice claim and a breach of fiduciary duty claim arise from
25
26

27 ³ Because Plaintiffs have lumped all Defendants together in their pleading, it is unclear whether Plaintiffs
28 allege that Doug, Troy, and Mountain West owed a fiduciary duty to all Plaintiffs or only to the
McAllister Plaintiffs.

1 the same material facts, the breach of fiduciary duty claim should be dismissed as
2 duplicative.”).

3 As noted in *Buehler* and other jurisdictions, a breach of fiduciary cause of action
4 cannot survive when it’s merely a recast of the professionally negligence cause of action.
5 There must be more. Here, Plaintiffs merely allege “Defendants breached the duty to
6 disclose material information regarding the investments, including the risks, the
7 creditworthiness and lack of operating history of the tenants, the failure to conduct
8 adequate due diligence on the tenants, conflicts of interest, fees charged reducing the funds
9 actually invested, and all other materials facts alleged hereinabove.” (Dkt. 91, ¶ 156). Such
10 allegations are nothing more than a recast of Plaintiffs claim for professional negligence.
11 Without more, Plaintiffs’ breach of fiduciary duty cause of action cannot stand.

12 **E. Plaintiffs’ Seventh Cause of Action for Conversion Must be Dismissed**
13 **for Failing to State a Claim**

14 “Conversion is the wrongful exercise of dominion over the property of another.”
15 *Oakdale Vill. Group v. Fong*, 43 Cal.App.4th 539, 543, 50 Cal.Rptr.2d 810 (1996). “The
16 elements of a conversion claim are (1) the plaintiff’s ownership or right to possession of
17 the property at the time of the conversion; (2) the defendant’s conversion by a wrongful
18 act or disposition of property rights; and (3) damages.” *Mindys Cosms., Inc. v. Dakar*, 611
19 F.3d 590, 601 (9th Cir. 2010) (citing *Oakdale Vill. Group v. Fong*, 43 Cal.App.4th at 543–
20 44). “It is necessary to show that the alleged converter has assumed control over the
21 property ‘or that the alleged converter has applied the property to his own use.’” *Id.* Along
22 with these, generally, a plaintiff must plead that the defendant committed a wrongful act
23 which typically involves misappropriating, commingling, or misapplying the funds for the
24 benefit of others. *Id.* (citing *LA Tech & Consulting, LLC v. Am. Express Co.*, 2023 WL
25 8166780, at *1 (9th Cir. Nov. 24, 2023)).

26 Here, Plaintiffs have alleged that “Defendants converted Plaintiffs’ funds for their
27 own use and intentionally deprived Plaintiffs of their rightful ownership and possession
28 of said funds” and that “Defendants knowing and intentionally diverted the Plaintiffs

1 funds to other purposes, including primarily payments to or for the benefit of himself.”
2 (Dkt. 91, ¶ 175; 177). Such a bare recitation of the elements, against all Defendants
3 collectively, without identification of specific wrongful acts, is not sufficient to state a
4 claim. *Nat’l Specialty Pharmacy, LLC v. Padhye*, 734 F. Supp. 3d 922, 929 (N.D. Cal.
5 2024) (“The conspiracy allegations are again vague and conclusory. This claim is again
6 asserted against “all Defendants” without distinction.... does not identify any particular
7 property that was allegedly converted by either company, nor does it allege any specific
8 act to wrongfully convert any property. Without such allegations, NSP has failed to state
9 a claim...”). Plaintiffs’ Seventh Cause of Action for conversion should be dismissed for
10 failing to state a claim.

11 **F. Plaintiffs’ Eighth Cause of Action for Constructive Fraud Lacks**
12 **Particularity in Violation of Rule 9(b).**

13 Plaintiffs fail to plead their fraud-based claims with particularity, including
14 Plaintiffs’ Eighth Cause of Action for Constructive Fraud. The Court should dismiss this
15 claim against Doug, Troy, and Mountain West, as “Rule 9(b) requires that, when fraud is
16 alleged, ‘a party must state with particularity the circumstances constituting fraud’”
17 *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (quoting Fed. R. Civ. P.
18 9(b)). “To satisfy Rule 9(b), a pleading must identify the who, what, when, where, and how
19 of the misconduct charged, as well as what is false or misleading about [the purportedly
20 fraudulent] statement, and why it is false.” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.,*
21 *Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks and citations omitted).
22 Only “[m]alice, intent, knowledge, and other conditions of a person’s mind may be alleged
23 generally.” *Id.* “Any averments which do not meet that standard should be ‘disregarded,’ or
24 ‘stripped’ from the claim for failure to satisfy Rule 9(b).” *Kearns*, 567 F.3d 1124 (quoting
25 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003)).

26 Rule 9(b) also prohibits “merely lump[ing] multiple defendants together” and
27 requires Plaintiffs to differentiate their allegations when suing more than one defendant
28 and inform each defendant separately of the allegations surrounding his or her alleged

1 participation in the fraud. *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007);
2 *Tuttle v. Treasure Valley Marine, Inc.*, No. 1:15-cv-00314-BLW, 2016 WL 3198230, at
3 *3 (D. Idaho June 8, 2016) Thus, a plaintiff alleging claims against multiple defendants
4 must, at a minimum, identify the role of each defendant in the alleged fraudulent scheme
5 to satisfy Rule 9(b). *Id.*

6 This heightened pleading standard is applicable to any claims “grounded in fraud” or
7 which “sound in fraud.” *Mostowfi v. 12 Telecom Int’l, Inc.*, 269 F. App’x 621, 624 (9th Cir.
8 2008). This includes claims for constructive fraud. *Bank of Am., N.A. v. A & M Dev., LLC*,
9 No. 1:11-cv-00336-BLW, 2012 U.S. Dist. LEXIS 71331 (D. Idaho May 21, 2012)
10 (finding heightened pleading standard applies to constructive fraud claims).

11 Additionally, for a corporate defendant additional information is needed when
12 pleading fraud. “A plaintiff’s burden in asserting a fraud claim against a corporate
13 employer is even greater. In such a case, the plaintiff must ‘allege the names of the persons
14 who made the allegedly fraudulent representations, their authority to speak, to whom they
15 spoke, what they said or wrote, and when it was said or written.’” (*Lazar v. Superior Court*
16 (1996) 12 Cal.4th 631, 645, citing *Tarmann v. State Farm Mutual Auto. Ins. Co.* (1991) 2
17 Cal.App.4th 153, 157.) Where the allegations are generalized as to the speaker or where
18 they lump together multiple speakers, those allegations do not meet the requisite
19 specificity for a fraud cause of action against a corporate entity. (*Tarmann, supra*, 2
20 Cal.App.4th at 157-158.)

21 Here, Plaintiffs lump all the defendants together making it impossible to determine
22 what conduct each party allegedly engaged in, and impossible to differentiate the roles of
23 each in the alleged fraud. The “who, what, when, where, and how” elements are entirely
24 done away with in Plaintiffs’ conclusory, all-encompassing allegations. Plaintiffs fail to
25 precisely identify the time, place and the nature of every false or misleading statements
26 allegedly made by Doug and/or Troy (and when, or if, they are alleged to have been
27 speaking on behalf of Mountain West), as required. *In re Oak Tech. Sec. Litig.*, 1997 U.S.
28 Dist. LEXIS 18503 (N.D. Cal. Aug. 1, 1997). Plaintiffs Seventh Cause of Action must all

1 be dismissed for failing to satisfy Rule 9(b)'s heightened pleading standard.

2 **G. Plaintiffs' Eleventh Cause of Action for Violation of Unfair**
3 **Competition Law Fails to State a Claim**

4 The Unfair Competition Law ("UCL") prohibits "any unlawful, unfair or fraudulent
5 business act or practice." Cal. Bus. & Prof. Code § 17200. The "unlawful" prong of the
6 UCL "borrows violations of other laws and treats them as independently actionable."
7 *Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal. App. 4th 824 (2006) (superseded on
8 other grounds as stated in *Kowalsky v. Hewlett-Packard Co.* 771 F. Supp. 2d 1156 (N.D.
9 Cal. 2011)). The "unfair" prong requires proving either (1) a practice that "offends an
10 established public policy or is immoral, unethical, oppressive, unscrupulous or
11 substantially injurious to consumers" and that is "tethered to specific constitutional,
12 statutory or regulatory provisions," *Bardin v. Daimlerchrysler Corp.*, 136 Cal. App. 4th
13 1255 (2006); or (2) that "the utility of the defendant's conduct [is outweighed by] the
14 gravity of the harm to the alleged victim," *Schnall v. Hertz Corp.*, 78 Cal. App. 4th 1144
15 (2000). The "fraudulent" prong of the UCL "require[s] only a showing that members of
16 the public are likely to be deceived." *Daugherty*, supra.

17 As to any "unlawful" act, practices prohibited by Section 17200 are "any practices
18 forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory
19 or court-made." *Saunders v. Superior Court*, 27 Cal.App.4th 832, 838-9 (1994). Plaintiffs
20 are required to allege the specific law violated to use this prong. *Khoury v. Maly's of*
21 *Calif., Inc.*, 14 Cal.App.4th 612, 616 (1993) (sustaining a demurrer to a Section 17200
22 claim without leave to amend because plaintiff did not identify which section of the law
23 had been violated, and merely alleged that "defendants breached [Section 17200] by
24 refusing to sell [the products] to plaintiff for the purpose of ruining and interfering with
25 his beauty supply business, with the effect of misleading plaintiff's customers.")).
26 Nowhere do Plaintiffs allege that Doug, Troy, or Mountain West violated any law or
27 undertook any practice forbidden by law—whether civil or criminal, federal, state, or
28 municipal, statutory—giving rise to a claim for "unlawful" business practices.

1 As to the “unfair” prong, Plaintiffs fail to allege any purportedly “unfair” business
2 practices by Doug, Troy, or Mountain West at all, much less with the required specificity.
3 “[T]he word ‘unfair’ in that section means conduct that threatens an incipient violation of
4 an antitrust law, or violates the policy or spirit of one of those laws because its effects are
5 comparable to or the same as a violation of the law, or otherwise significantly threatens or
6 harms competition.” *Cel-Tech Comm.’s, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th
7 163, 187 (1999). Here, at paragraphs 209-212, Plaintiffs merely summarize the First
8 Amended Complaint and state the legal conclusions that “Defendants’ material
9 misrepresentations and omissions described herein constitute unlawful, unfair and false
10 practices” and “Defendants’ actions were unfair and unlawful because they engaged in
11 deceptive practices, including the deliberate withholding of material information, failure
12 to provide full and complete disclosures, and engaging in a patterned behavior of
13 misconduct, as set forth above.” (Dkt. 91, ¶ 209-212).

14 Although the statute was intended to provide broad form relief, it was not intended
15 to be a catch all for every alleged wrong committed.

16 Last, “fraudulent” business practices do not, as some assume, refer to the common
17 law tort of fraud. Rather, this prong of Section 17200 requires a showing that members
18 of the public are “likely to be deceived” by the practices. *South Bay Chevrolet v. GMAC*,
19 72 Cal.App.4th 861, 888 (1999). Like all other claims, there are no specific allegations
20 that Doug, Troy, and Mountain West made any representation to anyone, or made any
21 statement, likely to deceive the public.

22 While like elsewhere the term “Defendants” also appears in the Unfair Competition
23 cause of action, this does not save the claim. Although Plaintiffs allege that “Defendants”
24 engaged in the “fraudulent” practices described in the First Amended Complaint;
25 however, as already established, there are no specific allegations that Doug, Troy, or
26 Mountain West made any misrepresentations or concealed any facts.

V. CONCLUSION

Respectfully, the instant motion has established that all California courts lack both general and specific personal jurisdiction over Doug Scheel, Troy Scheel, or Mountain West. Specifically, California cannot be fairly regarded as Mountain West's home. Moreover, Mountain West has not purposefully directed activities or availed itself to California. Doug Scheel and Troy Scheel are residents of Utah with no ties to California. As such, Doug Scheel, Troy Scheel, and Mountain West are entitled to an order granting this motion and dismissing this action for lack of personal jurisdiction.

Furthermore, Plaintiffs' claims for Securities Act violations should be dismissed, as the statute of limitations for all of the alleged violations occurred more than a year before the Original Complaint was filed on December 18, 2024. Plaintiffs' claim for Breach of Fiduciary Duty should be dismissed for failing to state a claim, as its allegations are indistinguishable from Plaintiffs' claim for professional negligence. Additionally, Plaintiffs' have failed to properly plead their claims for violations of Section 10(b) of the Securities Exchange Act, Conversion, Constructive Fraud, and Violations of Unfair Competition Law, as each these claims lacks the specificity and should be dismissed for failing to state a claim.

Dated: May 2, 2025

CLARK HILL LLP

By: /s/ *Penelope M. Deihl*

Penelope M. Deihl
Attorney for Defendants,
Douglas Scheel, Troy Scheel, and
Mountain West Commercial, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2025, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then be sent Electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent by first class mail to any counsel of record indicated as non-registered participants.

Dated: May 2, 2025

/s/ Hiba Hammad

Hiba Hammad